



MINUTES

JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN SERVICES

August 25, 2011

Room 643, Legislative Office Building

The Joint Legislative Oversight Committee on Health and Human Services met at 10:00 A.M., Thursday, August 25, 2011, in Room 643 of the Legislative Office Building. Members present were Senator Louis Pate, Co-Chair; Representative Nelson Dollar, Co-Chair; Representative Justin Burr Co-Chair; Senators Austin Allran, Stan Bingham, Harris Blake, Fletcher Hartsell, Eric Mansfield, Martin Nesbitt, William Purcell, Tommy Tucker; Representatives Martha Alexander, William Brisson, William Current, Mark Hollo, Pat Hurley, Bert Jones, Tom Murry and Fred Steen.

Legislative Services staff attending the meeting include: Lisa Hollowell, Lee Dixon, Denise Thomas, Donnie Charleston, Karlynn O'Shaughnessy from the Fiscal Research Division; Shawn Parker, Theresa Matula, Amy Jo Johnson, Jan Paul, and Susan Barham from the Research Division; and Lisa Wilks and Joyce Jones from the Bill Drafting Division. A Visitor Registration Sheet is attached and made a part of the minutes (Attachment 1).

Chairman Dollar welcomed the members and visitors. He further recognized the Sergeant-at-Arms staff, and informed the Committee that Rennie Hobby will serve as Clerk to the Committee and Dr. Pat Porter, Consultant to the Committee.

This being the initial meeting of the Joint Legislative Oversight Committee on Health and Human Services, Chairman Dollar took the opportunity to explain the Committee framework and how future meetings would be conducted. He then focused on a confluence of issues confronting the Department of Health and Human Services (DHHS) including: the provision of personal care services, (hereafter PCS); what constitutes an institution of mental diseases, (hereafter IMD); and the United States Department of Justice investigation regarding individuals with mental illness receiving services in adult care homes. Chairman Dollar categorized these as some of the most difficult and complex issues that the Department and State will be considering and these items will need to be addressed in the Committee as the DHHS works to come up with options for resolution of these issues.

Chairman Dollar then recognized Theresa Matula for some overview remarks. She provided an overview of findings by the United States Department of Justice in response to a complaint by Disability Rights North Carolina, and the possible identification of adult care homes as institutions for mental diseases. Ms. Matula reported that an investigation was conducted by the US Department of Justice, Civil Rights Division, and she mentioned some of the findings contained in the letter that was sent to North Carolina Attorney General Cooper in July 2011. Additionally, Ms. Matula referenced guidelines for determining whether an institution is an IMD and actions taken by the Department. At the present time, DHHS has determined that 38 of the adult care homes have the potential to be classified as an IMD. (The US DOJ Findings and IMD as it Impacts Adult Care Homes and Individuals with Mental Illness handout is Attachment 2.)

Lee Dixon was recognized and outlined the current issues with Personal Care Services delivered in Adult Care Homes and In-Home with some variability in eligibility and funding requirements for each. The Department undertook a review and restructuring of the PCS services in 2010 resulting in new eligibility standards increasing the Activities of Daily Living (ADL's) from two to three. It was determined by DHHS this would have an impact on Medicaid funding until such time as the Department can resolve the interrelated issues impacting Adult Care Homes, Institutions of Mental Disease and Personal Care Services for the older adults and individuals with disabilities who have relied on these services (Attachment 3). Mr. Dixon noted that the State was asked by the federal government to have a plan ready in February, 2012 for how these issues will be addressed but the Secretary has requested an extension of this deadline to October 2012.

Senator Tucker commented that this situation appeared to be a bleak one. He asked if the issues presented had been previously identified and if the appropriate people were informed in a timely manner. Theresa Matula responded that this has been a gray area and the State has responded to what they thought best at different intervals and in responding to the Olmstead decision, the State decided to take certain actions, and in hindsight, perhaps those could have been done differently. She deferred to the Department to provide further information.

Representative Alexander was recognized and asked who provides permission to delay the implementation. Lee Dixon responded that a letter was sent from Secretary Cansler to Secretary Sebelius, US Department of Health and Human Services. Chairman Dollar then recognized Senator Mansfield who asked staff if they had an estimate of the cost to the State and Teresa Matula responded that the Department might be in a better position to respond.

With the State facing the potential imminent landfall of Hurricane Irene, Chairman Dollar asked DHHS to provide a preparedness update. Sherry Bradsher, Director of the Division of Social Services gave this update. Health and Human Services teams will prepare to assist in anyway that they can. Their primary role is to provide oversight with the local Departments of Social Services, Emergency Management teams, and Public Health who provide mass sheltering for the general public. These efforts have begun. Coordination of federal requirements with local staff is provided with offices active 24/7 throughout the duration of the storm. She reported that she has been pleased with the efforts and activities thus far.

The Chairman then recognized Lanier Cansler, Secretary to the Department of Health and Human Services, to explain the three issues facing DHHS which involve the provision of services to adult care home residents. The Secretary described the issues as "the perfect storm" with the most critical and urgent being the IMD issue. Under the Medicaid rules if a person is between the ages of 21-65 and is in an institution for mental disease he is no longer subject to Medicaid coverage while in that institution. This is an issue of great concern. The Department will be doing assessments to determine if a facility is an IMD, that is, if 51% or more of the facility residents carry a primary diagnosis of mental illness, if so, federal Medicaid dollars will cease for that facility. The assessments are needed to determine if a person in the facility has a primary diagnosis of mental illness or is residing in the facility to receive services to address a primary health concern such as diabetes. The Secretary noted that he will not assume that the 38 facilities are all operating as IMD's until the assessments are done. A clinical assessment will be completed with provider input. There will be independent, external reviews in order to eliminate any mistakes on the classifications of the individuals.

The second element of the "perfect storm" is the PCS issue. Secretary Cansler described part of the problem with PCS is the State's operation of two programs. There is an in-home program and an adult care PCS program, both receiving Medicaid funding. The Centers for Medicare & Medicaid Services (CMS) has informed the Department that the State can only have one PCS program and set a deadline of February 2012 for the Department to comply.

Over the last 15 years the State has built a system in the adult care homes where a portion of the costs may be paid with State-County Special Assistance and the cost of personal care services may be paid with Medicaid funds. Due to PCS changes in the requirements for assistance with Activities of Daily Living (ADL), we could lose the Medicaid portion of the reimbursement. The question Secretary Cansler posed was how to set the program to insure the in-home care is appropriate and within an affordable budget but avoid a collapse of the adult care home industry because of substantial reductions in the amounts of reimbursements under the PCS program.

The third element of the “perfect storm” is the United States Department of Justice (US DOJ) investigation which began as a result of the complaint filed by Disability Rights of North Carolina. The Americans with Disability Act (ADA) and the Olmstead case are factors in the US DOJ findings. The Secretary noted that he believes the State is moving in the right direction insofar as delivering services, and that the principal issue in the complaint will be more about housing than services. Discussions are ongoing with the Department of Justice to begin negotiating options to resolve some of the issues. He assured the members that they will be a part of the discussion as the investigation moves forward. He stated that the problems were two-fold: First, making sure that we do not have service recipients who lose their Medicaid coverage or their housing and second, assuring that we prevent a sudden and substantial reduction in reimbursement to the adult care home facilities which could result in an industry collapse. This will impact not only those with mental illness or disabilities but also impact the aged who reside in the facilities. There is no simple solution.

The Secretary has requested a deadline extension from February to October of 2012 from the federal government to put together a more comprehensive plan because in order to solve many of the issues, legislative action will be required. In closing, the Secretary stated that this is a complicated issue and is something that the US Department of Justice, Centers for Medicare & Medicaid Services, and the Office of Inspector General are pushing hard for results with a relatively short timeframe to get it done.

The following are questions from the Committee members and responses of the Secretary:

Rep. Jones asked if there were other states experiencing these issues or is it unique to North Carolina.
Response: Department of Justice is doing investigations with respect to the ADA in a number of states; Georgia, New York, Oregon; however every state is different.

Senator Bingham asked about housing costs and comparative numbers for individuals.
Response: Worst case scenario probably a \$1,000/\$1100 more a month than we are currently spending for individuals depending on the housing arrangements.

Senator Tucker asked for a definition of ADL's under PCS.
Response: Activities of daily living this would include issues relating to bathing, feeding and clothing. If you have problems with at least 3 ADL's then we can provide PC services.

Rep. Hurley asked about who will be doing the assessments.
Response: The CABHAs, in conjunction with the facilities, and independent reviews. He estimated 1200 assessments will be needed in 38 facilities. Alzheimer patients will be excluded from the assessments.

Chairman Dollar asked if the assessment instrument will be standardized.
Response: Once the tool is identified it will be administered in a standard format. Assessors will have to be trained.

Representative Brisson stated that he thought the assessments had already been done on individuals and further, what impact will this have on the budget recently passed.
Response: Issue is not connected to the current budget. This assessment is different than that routinely

done to determine eligibility for PCS in that you are determining why an individual is in an adult care home. The assessments will be done for IMD purposes and not duplicate the current assessments. A proper assessment will help us better manage the population and provide better data to make decisions. Again there will be no impact on the budget recently passed.

Representative Alexander asked if the assessment tool will be automated and used in the future in all facilities.

Response: That would be our plan that we could use the assessment tool and be able to modify it as laws change. Our hope is that we could use the tool long-term.

Senator Allran wanted to know if the State Medicaid eligibility requirements could be changed by statutes or would it require federal approval.

Response: We can't change the program without getting approval from the federal government. When it comes to the eligibility standards under the Health Care Reform we basically cannot back up with where we are right now.

Representative Current expressed concerns about eliminating adult dental care. Without specifically identifying dental diseases, this could result in further medical conditions requiring greater expense to the Medicaid system. He also asked if there was any dental care expertise on the Medical Advisory Committee.

Response: He has been contacted by the dental society and advised them to submit a name for consideration.

Chairman Dollar asked what efforts have been made in determining the definition of PCS as it relates to the two systems; In-home and adult care home.

Response: We had a taskforce working on that, however due to recent pending legal actions we were advised not to continue because some of the recent discussions might be used in some court action. My goal is to have a strategy within the next 60-90 days to address the PCS issue.

Chairman Dollar referenced the DOJ letter and asked if the Secretary thought that the number of adult care homes potentially affected would be far greater than 38.

Response: The DOJ issue is totally different but intertwined, but yes, it could go way beyond that.

The Chairman thanked Secretary Cansler and staff for their efforts in providing information to the committee.

There being no further business, the meeting adjourned at 12:30 PM.

Senator Louis Pate, Co-Chair

Representative Nelson Dollar, Co-Chair

Representative Justin Burr, Co-Chair

Candace Slate, Committee Assistant